

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 3/6/08

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LEROY BROWN, :

Petitioner, :

07 Civ. 8672 (RMB) (AJP)

-against- :

**ORDER**

KENNETH S. PERLMAN, Superintendent of :  
Mid-State Correctional Facility, :

Respondent. :

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**ANDREW J. PECK, United States Magistrate Judge:**

By Order dated October 18, 2007 (Dkt. No. 3) the Court noted in a footnote:

The Court cannot determine from the Petition – in the absence of petitioner's state appeal and coram nobis papers – whether all of Brown's current habeas claims have been fully exhausted in state court. For example, it is not clear if Brown would need to bring a C.P.L. § 440 motion to exhaust his ineffective assistance of trial counsel claims. Brown should review his petition and determine if he fully presented all of his habeas claims to the state courts and if not, remedy that.

As far as the Court knows, Brown has not brought a C.P.L. § 440 motion in state court to raise his ineffective assistance of trial counsel claim, which it is now clear is not exhausted.

Brown is to advise this Court, by March 27, 2008, whether:

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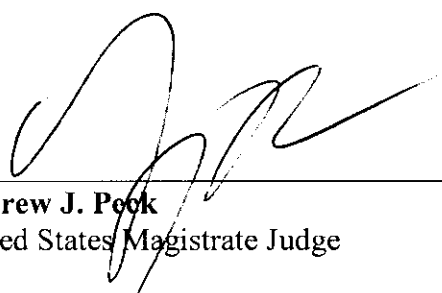
1. He wishes to bring a C.P.L. § 440 motion in state court to exhaust his ineffective assistance of trial counsel claim. If so, he must bring the C.P.L. § 440 motion by April 10, 2008, promptly seek leave to appeal from any denial of same, and advise this Court of the state court's final decision on the § 440 motion within 30 days of that decision. The Court notes that this process will significantly delay this Court's decision on Brown's habeas petition, which will be held in suspense until he exhausts state remedies, or

2. He wishes this Court to decide the habeas petition at this time (which means that this Court will be denying the ineffective assistance of trial counsel claim as unexhausted).

If this Court does not hear from Brown by the March 27, 2008 deadline, the Court will decide the petition (and deny the ineffective assistance of trial counsel claim as unexhausted).

SO ORDERED.

Dated: New York, New York  
March 6, 2008

  
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**Andrew J. Peck**  
United States Magistrate Judge

Copies to: Leroy Brown (Regular & Certified Mail)  
Jodi A. Danzig, Esq. (Fax)  
Judge Richard M. Berman

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

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**Dated:** March 6, 2008

**Total Number of Pages:** 3

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